

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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ELECTRONICALLY FILED
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DATE FILED: 5/12/2021

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OSIRIS MOSLEY,

Plaintiff,

-v-

DANNY CAMPBELL,

Defendant.
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19-cv-10722 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

Defendant moves to dismiss the amended complaint for failure to prosecute and, pursuant to Fed. R. Civ. P. 37(b), as a sanction for violation of this Court's orders. Dkt. No. 45. Rule 37(b)(2)(vii) provides that the Court may treat as contempt of court the failure to obey any order except an order to submit to a physical or mental examination. Plaintiff was ordered to appear for his deposition on March 23, 2021. He further was ordered to inform the Court and Defendant by March 16, 2021 through motion to adjourn the deposition if he was unable to attend on March 23, 2021. *Id.* He failed to appear for his deposition and failed to move prior to March 16, 2021 for relief from the order compelling him to be deposed. Defendant has suffered prejudice from Plaintiff's failure to appear. The violation of the Court's order comes against a backdrop of Plaintiff's prior discovery violations. Dkt. No. 43. Plaintiff offers an excuse for his failure to appear, but that excuse has not been tested under oath and through cross-examination.

Parties are directed to appear on June 9, 2021 at 2:00 p.m. in Courtroom 15C of the U.S. District Court for the Southern District of New York, 500 Pearl Street, New York, New York. Plaintiff shall be prepared to address under oath why he should not be held in contempt of court and his complaint either dismissed or other sanctions imposed and may offer evidence in his own defense.

The Clerk of Court is respectfully directed to mail a copy of this order to Plaintiff.

SO ORDERED.

Dated: May 12, 2021
New York, New York



LEWIS J. LIMAN
United States District Judge